

Report focuses primarily on just one set of discussions, giving the Court a misimpression of the actual status, and includes factual inaccuracies and irrelevant information. With approximately \$2 billion at stake here, as evidenced by its Motion to Stay (Docket No. 4499749), Entergy has the greatest incentive of any of the parties to ensure that the abeyance period is used efficiently to determine if a negotiated resolution is possible.

Thus, Entergy respectfully requests that the Court continue the abeyance until at least the date of the next proposed status report—July 24, 2017—unless an impasse is reached prior to that time and Entergy moves the Court to dissolve the abeyance.

RESPONSE

1. The following background is relevant to this response. The final rule under review here, “Promulgation of Air Quality Implementation Plans; State of Arkansas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan” (the “FIP”), 81 Fed. Reg. 66,332 (Sept. 27, 2016), would require four coal-fired units at two power plants in Arkansas that are co-owned and operated by Entergy to install and operate approximately \$2 billion of pollution controls to achieve imperceptible improvements to visibility at several wilderness areas. *See* Motion to Stay (Docket No. 4499749) at 2-3. Because of these onerous and unlawful requirements, Entergy and others petitioned the U.S. Environmental Protection Agency (“EPA”) to reconsider and administratively stay the FIP and, subsequently, moved the Court for a stay. *Id.* at 1.

2. After the stay motions were filed with the Court, EPA partially granted reconsideration of the FIP and agreed to issue a 90-day administrative stay. The 90-day administrative stay was promulgated on April 25, 2017, and is set to expire July 24, 2017—the same day as the next proposed status report to the Court. *See* 78 Fed. Reg. 18,994 (April 25, 2017). The partial grant of reconsideration, together with the subsequent 90-day day stay and a suggestion of settlement negotiations by the United States, provided the window of opportunity that led the parties to seek a period of abeyance in the first place.

3. During the abeyance period, the parties have been working in parallel paths on several elements of an overall resolution, which may ultimately include: a regional haze State Implementation Plan (“SIP”) developed by the State of Arkansas to replace the FIP, and associated administrative agreements; a settlement agreement with EPA to resolve the instant litigation; and, potentially, a separate agreement between Entergy and the Conservation Groups.

4. That there has been only one “all hands” settlement meeting, as alleged by the Conservation Groups, is beside the point because it ignores the multiplicity of other, smaller group meetings and exchanges of information that have and continue to occur in furtherance of the ultimate goal of an overall resolution. The State of Arkansas, for example, reports it participated in thirteen meetings or calls concerning settlement and a potential regional haze SIP, including with the Conservation Groups. State of Arkansas’ Response to Conservation Group’s Status Report at 3 (Docket No.

4550226). Entergy has actively participated in this process and intends to continue doing so.

5. Entergy will not respond in kind to the Conservation Groups' description of specific settlement dates and events because those details are, Entergy believes, largely subject to settlement confidentiality and are neither necessary nor appropriate fodder for this response. Nonetheless, Entergy vigorously disputes any implication in the Conservation Groups' Status Report that it has acted in anything less than good faith in this process.

6. In addition to giving the Court a misimpression of the level of settlement-related activity that has occurred since these consolidated cases were first placed in abeyance, the Conservation Groups' Status Report improperly focuses on the alleged health benefits of the FIP. *See id.* at 4, 7, 9, and Exhibit 2. These are arguments disguised as a status report and are legally irrelevant. The Clean Air Act's regional haze program and the FIP are solely concerned with *visibility* impairment in Class I federal areas. *See, e.g.*, 42 U.S.C. § 7491. Other Clean Air Act programs not at issue here are concerned with health and other environmental issues. The Court should not consider the Conservation Groups' health benefit allegations at any stage of this litigation.

7. The Conservation Groups further give the Court inaccurate information about emissions from the four Entergy units at issue (two each at the Independence and White Bluff plants). Although relying on old data, the Conservation Groups

assert that “Each plant *emits* more than 30,000 tons of SO₂ [sulfur dioxide] and over 13,000 tons of NO_x [nitrogen oxides] per year.” Conservation Groups’ Status Report at 4 (emphasis added). In fact, while emissions vary year-to-year, actual emissions from the White Bluff and Independence plants have been significantly below the alleged values over the last few years. For example, in 2015 emissions of SO₂ were approximately *50% and 32%* lower at Independence and White Bluff, respectively, than alleged by the Conservation Groups. And emissions of NO_x were approximately *52% and 27%* lower, respectively. Emissions in 2016 were also substantially lower than alleged. The Court should not consider the Conservation Groups’ inflammatory and imprecise allegations.

8. Finally, the Conservation Groups make the disheartening statement that they does “not see a viable path towards settlement at this date.” Conservation Groups’ Status Report at 9. While Entergy cannot guarantee any particular outcome, Entergy remains optimistic that a consensual resolution is possible. But even if a settlement between Entergy and the Conservation Groups does not occur—which is premature to conclude—that fact would *not* prelude Entergy and other parties from settling with the State and EPA. Even a partial settlement would significantly narrow the issues in these consolidated cases, if not resolve them entirely as a practical matter, and would thereby conserve judicial resources.

CONCLUSION

For the foregoing reasons, Entergy respectfully request that the Court continue the abeyance until at least the date of the next proposed status report—July 24, 2017—unless they reach an impasse prior to that time and move the Court to dissolve the abeyance.

Dated: June 22, 2017

Respectfully submitted,

/s/ Timothy K. Webster

Timothy K. Webster

Joel F. Visser

Sidley Austin L.L.P.

1501 K Street, N.W.

Washington, D.C. 20005

Telephone: (202) 736-8000

twebster@sidley.com

jvisser@sidley.com

/s/ Debra J. Jezouit

William M. Bumpers

Debra J. Jezouit

Allison Watkins Mallick

Baker Botts L.L.P.

1299 Pennsylvania Ave., NW

Washington, DC 20004

(202) 639-7700

william.bumpers@bakerbotts.com

debra.jezouit@bakerbotts.com

allison.mallick@bakerbotts.com

Kelly M. McQueen

Entergy Services, Inc.

425 W. Capitol Ave., 27th Floor

Little Rock, AR 72201

(501) 377-5760

kmcque1@entergy.com

*Counsel for Entergy Arkansas Inc., Entergy
Mississippi Inc., and Entergy Power, LLC*

CERTIFICATE OF COMPLIANCE

The undersigned counsel states that Fed. R. App. P. 27(d)(2)(A) does not apply but that, in any event, this response contains 1,096 words, excluding the caption, table of contents, table of authorities, list of exhibits, glossary of terms, signature blocks, and certificates of compliance and service as counted by a word processing system and, therefore, is within the 2,600 word limit for responses to motions. This response also complies with typeface and type-style requirements of Fed. R. App. P. 32(a)(5)-(6) because it has been prepared in a proportionally spaced typeface in 14-point Garamond.

Dated: June 22, 2017

/s/ Timothy K. Webster

*Counsel for Entergy Arkansas Inc., Entergy
Mississippi Inc., and Entergy Power, LLC*

CERTIFICATE OF SERVICE

I hereby certify that the copies of the foregoing Response to National Parks Conservation Association and Sierra Club's Status Report by Entergy Arkansas Inc., Entergy Mississippi Inc., and Entergy Power, LLC was served, this 22nd day of June, 2017, through CM/ECF on all registered counsel.

/s/ Timothy K. Webster

*Counsel for Entergy Arkansas Inc., Entergy
Mississippi Inc., and Entergy Power, LLC*